

**OPINION NO. 022, s. 1998**

February 4, 1998

Mr. Gonzalo T. Santos, Jr.  
Chief Executive Trustee  
Asset Privatization Trust  
North Davao Mining Corp. Bldg.  
104 Gamboa St., Legaspi Village  
Makati City

S i r :

This refers to your request for an opinion on the proposed role of the Philippine National Construction Corporation (PNCC) in the disposition of a government property through the Asset Privatization Trust (APT).

Specifically, you inquire whether the APT may directly hire the PNCC as consultant in a project involving the development of the present site of the International School Incorporated (ISI) in Makati City which is owned by the government by virtue of a deed of donation executed by ISI in favor of the government pursuant to P.D. No. 732. The property is under a lease — back arrangement for a period of twenty-five (25) years, renewable for another twenty-five (25) years, or up to year 2025 whereby ISI, as lessee, shall be allowed to continue using the property within the said period and "exclusively for educational purposes", free of rentals.

You state that ISI plans to relocate its school complex to Fort Bonifacio and has offered to waive its remaining rights and interests over the property in favor of the National Government; thus, in a Memorandum dated January 16, 1996, the President directed APT, on behalf of the government, to enter into a joint venture agreement with ISI to offer the subject property for a long term lease to interested parties; whereupon, APT entered into a Memorandum of Agreement (MOA) with ISI which provides, among others, that ISI should be able to relocate the school complex to Fort Bonifacio by June 1999, otherwise, it shall be liable to payment of damages.

We understand that the parties' undertakings under the MOA would require, for their fulfillment, the hiring of a consultant by APT. The NEDA Guidelines prescribe an open public bidding for the hiring of a private consultant, but due to time constraint, a proposal has been made for APT to just directly engage the services of a government entity, the PNCC, as its consultant in this particular project. Hence, your query.

The question whether PNCC is a government-owned or controlled corporation (GOCC) and, therefore, a government entity had been previously passed upon by the Office of the President. In a letter dated May 20, 1991, Deputy Executive Secretary Sonny Coloma informed the then PNCC President that PNCC is "an acquired asset corporation as

defined under Section 2 of Administrative Order No. 59". The conclusion, although not explicitly stated in said letter, is that PNCC is not a GOCC.

We have no reason to dispute the aforesaid position of the Office of the President on the corporate status of the PNCC. In a previous opinion of this Department (Op. No. 37, s. 1995), we declined to pass upon a similar issue since "the Office of the President already declared that PNCC is 'an acquired asset corporation as defined in Administrative Order No. 59'" and we are "not at liberty to review or re-examine" such ruling unless upon its request.

But even if we may give our comment now on the aforesaid position of the Office of the President, our view would be the same — that PNCC is an acquired asset corporation as defined in Section 2 of Administrative Order No. 59.

Section 2 of Administrative Order No. 59 provides in full as follows:

- "SEC. 2. Definition of Terms. — As used in this administrative Order, the following terms shall mean:
- (a) Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the Government, directly or indirectly, has ownership of the majority of the capital or has voting control; Provided, That an acquired asset corporation as defined in the last paragraph shall not be considered as GOCC or government corporation.
  - (b) Acquired asset corporation is a corporation (1) which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired by the government through final judgment in a sequestration proceeding; or (2) which is a subsidiary of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by law or by enunciated policy is required to be disposed of to private ownership within a specified period of time." (Emphasis supplied.)

In Opinion No. 37, *supra*, we took note of the circumstances that "gave birth" to PNCC, viz:

". . . PNCC was registered with the Securities and Exchange Commission in 1966 as a purely private corporation under the name of 'Construction and Development

Corporation of the Philippines' (CDCP); that by virtue of LOI No. 1295 issued in 1983, various government financial institutions (GFIs), to which the CDCP was heavily indebted, were directed to convert their loans to CDCP into equity to save the firm from impending financial collapse; that the debt-to-equity conversion resulted in the GFIs becoming the majority equity owners of the CDCP which was accordingly renamed PNCC to reflect the government interest therein; and you are now in a quandary as to PNCC's corporate status because it possesses characteristics of a private corporation although the majority interest thereof is owned by the government, . . ."

Considering the manner by which the GFIs acquired ownership of the shares of stocks of CDCP (now PNCC), which is through debt-to-equity conversion, such circumstance makes PNCC fall squarely within the aforementioned definition of acquired asset corporation.

It may be mentioned in passing that PNCC is not in the list of GOCCs for privatization, but a transferred asset, based on information obtained by this Department from the Committee on Privatization (COP). As a transferred asset, PNCC is for eventual disposition by APT to the private sector.

Based on these premises, we conclude that PNCC is not a GOCC, although its shares of stocks are owned by GFIs. However, we are not making any comment on the applicability or non-applicability of the NEDA Guidelines to PNCC in the absence of a clear provision in the said Guidelines defining its coverage and exemption, if any, from its coverage. You are advised to seek clarification from NEDA on this matter.

Very truly yours,

(SGD.) SILVESTRE H. BELLO III  
Acting Secretary